



Issued: January 15, 2004

AAPD 04-04

Implementation of the United States Leadership Against HIV/AIDS, Tubercu-losis and Malaria Act of 2003 – Eligibility for Assistance, Limitation on the Use of Funds and Opposition to Prostitution and Sex Trafficking

Category:	Subject	Assistance, Contracts
	Type:	Policy

AAPDs are **EFFECTIVE AS OF THE ISSUED DATE** unless otherwise noted in the guidance below; the directives remain in effect until this office issues a notice of cancellation.

New Provision/Clause

Provided Herein: X Yes; Scheduled update to Prodoc: April 2004

No

(Signature on file)

TIMOTHY T. BEANS

1. PURPOSE:

The purpose of the AAPD is to provide clauses to be included as new standard provisions for assistance agreements and contracts that include FY 2004 HIV/AIDS funds. These provisions: (i) permit recipients to not endorse or utilize a multisectoral approach to combating HIV/AIDS, or to not endorse, utilize or participate in a prevention method or treatment program to which the organization has a religious or moral objection; (ii) prohibit the funds provided under the agreement to be used to promote the legalization or practice of prostitution or sex trafficking; and (iii) require the recipients to agree that they oppose prostitution and sex trafficking.

2. BACKGROUND:

The United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003, Pub.L. No. 108-25 (2003) (the “Act”) authorizes funds to be appropriated for HIV/AIDS activities for the fiscal years 2004-2008. The Act includes, among other things, certain restrictions on the use of HIV/AIDS funds, and requires recipients of those funds to have certain policies in place. It also permits an organization to receive funds even if such organization cannot endorse, utilize or participate in a prevention method or treatment program to which the organization has a religious or moral objection.

Specifically, Section 301, entitled “Assistance to Combat HIV/AIDS,” includes the following provisions:

“(d) ELIGIBILITY FOR ASSISTANCE- An organization that is otherwise eligible to receive assistance under section 104A of the Foreign Assistance Act of 1961 (as added by subsection (a)) or under any other provision of this Act (or any amendment made by this Act) to prevent, treat, or monitor HIV/AIDS shall not be required, as a condition of receiving the assistance, to endorse or utilize a multisectoral approach to combatting HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the organization has a religious or moral objection.

(e) LIMITATION. – No funds made available to carry out this Act, or any amendment made by this Act, may be used to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and when proven effective, microbicides.

(f) LIMITATION. – No funds made available to carry out this Act, or any amendment made by this Act, may be used to provide assistance to any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking.”

In response to a question from Senator Leahy on the Senate floor regarding provision (f) above, Senator Frist stated that “a statement in the contract or grant agreement between the U.S. Government and such organization that the organization is opposed to the practices of prostitution and sex trafficking because of the psychological and

physical risks they pose for women . . . would satisfy the intent of the provision.” 149 Cong. Rec. S6457 (daily ed. May 15, 2003) (statement of Sen. Frist).

3. GUIDANCE:

I. Eligibility

The following provision must be included in each new Request for Assistance, Annual Program Statement and Request for Proposal utilizing FY04 HIV/AIDS funding. When designing a program for HIV/AIDS the SO Team must be mindful of this requirement. The evaluation criteria should not give any special advantage to an organization that endorses or utilizes a multisectoral approach (multisectoral in the legislation refers to Abstinence, Be Faithful/Behavior Change, and Condoms).

In addition, the provision must be included in the Standard Provisions in any grant to a public international organization, any grant or cooperative agreement to a U.S. or non-U.S. non-governmental organization, and any contract that includes FY04 HIV/AIDS funds. In addition, these provisions are to be included when any existing assistance agreement or contract is amended to add FY04 HIV/AIDS funding.

ORGANIZATIONS ELIGIBLE FOR ASSISTANCE (JAN. 2004)

An organization that is otherwise eligible to receive funds under this agreement to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combatting HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the organization has a religious or moral objection.”

II. Limitation on the Use of Funds

The following must be included in the Standard Provisions in any grant to a public international organization, any grant or cooperative agreement to a U.S. or non-U.S. non-governmental organization, and any contract that includes FY04 HIV/AIDS funds. In addition, it is to be included when any existing assistance agreement or contract is amended to add FY04 HIV/AIDS funding.

PROHIBITION ON THE PROMOTION OR ADVOCACY OF THE LEGALIZATION OR PRACTICE OF PROSTITUTION OR SEX TRAFFICKING (JAN. 2004)

None of the funds made available under this agreement may be used to promote or advocate the legalization or practice of prostitution or trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

As a condition of entering into the referenced agreement, the recipient agrees that it is opposed to the practices of prostitution and trafficking because of the psychological and physical risks they pose for women, men and children.

The following definition applies for purposes of this clause:

Trafficking means the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs. UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the UN Convention against Transnational Organized Crime, Article 3, subparagraph (a).

The recipient shall insert this provision, which is a standard provision, in all subagreements under this award.

This provision includes express terms and conditions of the agreement and any violation of it shall be grounds for unilateral termination of the agreement by USAID prior to the end of its term.”

4. POINT OF CONTACT:

Please direct any questions to Allen Eisenberg, M/OP/P, Phone: (202) 712-1467, e-mail: aeisenberg@usaid.gov.